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When Must a Capital Jury Be Told That the Defendant Will Be Ineligible for Parole If Sentenced to Life?

by Jay E. Grenig

PREVIEW of United States Supreme Court Cases, pages 377-380. © 2000 American Bar Association.

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Editor's Note: The respondent's brief in this case was not available by PREVIEW's deadline.

ISSUE

When adjudicating a claim that a defendant in a death penalty case has a constitutional right to inform the jurors that if they spare his life, state law forbids him from ever being released from prison, is a federal habeas court bound by the state court's characterization of state law for federal constitutional purposes?

FACTS

In September 1992, Bobby Lee Ramdass and four other men entered a 7-Eleven store in Fairfax County, Va. The customers were ordered to lie on the floor and not look at them. Three of the men took the customers' wallets, money from the cash register, and cigarettes and lottery tickets from the store's stock. Mohammed Kayani knelt down next to the safe and unsuccessfully tried to open it. Ramdass squatted next to Kayani and yelled at him to open the safe "or I'll blow your fucking head off." Ramdass

then shot Kayani in the head, killing him for taking too long to open the safe. While dividing up the robbery proceeds, Ramdass told one of the men, "Don't tell anybody about this [or] I'll kill you and I'll kill your whole family." A Virginia jury found Ramdass guilty of capital murder in the commission of armed robbery.

At the sentencing phase of the trial, the Commonwealth of Virginia sought the death penalty, arguing that Ramdass presented a continuous threat to society. In support of this argument, the Commonwealth presented evidence of Ramdass' history of theft-related crimes that began at age 14 and his pattern of recidivism during periods of escape or probation. The prosecution detailed how, within three months of his mandatory parole after serving four years of a seven-year sentence for robbery, Ramdass committed a series of at least six armed robberies. Ramdass' attorney

(Continued on Page 378)

BOBBY LEE RAMDASS V.
RONALD J. ANGELONE
DOCKET NO. 99-7000

ARGUMENT DATE:
APRIL 18, 2000
FROM: THE FOURTH CIRCUIT

Case at a Glance

The Supreme Court is asked to determine whether a federal court is bound by a state court's determination that a defendant is ineligible for parole when determining whether the defendant has a right to inform the jurors that, if they spare his life, state law forbids him from ever being released from prison.

responded to the prosecution's argument by asserting that "Ramdass will never be out of jail. Your sentence today will insure that if he lives to be one hundred and twenty-two, he will spend the rest of his life in prison."

During the sentencing deliberations, the jury asked the judge: "If the Defendant is given life, is there a possibility of parole at some time before his natural death?" Over defense counsel's objection, the trial judge told the jurors that they "should impose such punishment as [they] feel is just under the evidence and within the instructions of the Court" and they "are not to concern [them]selves with what may happen afterwards." The jury returned a verdict recommending death on the capital murder count based upon Ramdass' "future dangerousness" and recommending four years' imprisonment on the firearm count.

At the sentencing hearing, Ramdass' attorney urged the court to impose a sentence of life in prison instead of death in light of Ramdass' ineligibility for parole under Virginia's three-strikes provision. Ramdass' parole eligibility at the time of the sentencing hearing was governed by Virginia's three-strikes statute, which provides that an individual is ineligible for parole if he has been convicted of three separate felony offenses of murder, rape, or armed robbery, which were not part of a common act, transaction, or scheme. Va.Code Ann. § 53.1-151(B1).

At the time the jury was deliberating on Ramdass' case, he had already been sentenced to 76 years' imprisonment in connection with the robbery of a Pizza Hut. In addition, about three weeks earlier, on Jan. 7, 1993, a jury had returned a verdict finding Ramdass guilty in

the armed robbery of a Domino's Pizza for which it recommended an 18-year sentence. The court, however, had not yet entered judgment in that case. It did so nearly three weeks after the jury in this case concluded its sentencing deliberations.

Ramdass' attorney informed the court that three jurors had told him they would have imposed a life sentence rather than death if they had known that Ramdass would not be eligible for parole. Rejecting Ramdass' arguments, the trial court sentenced Ramdass to death.

Ramdass appealed to the Virginia Supreme Court, arguing that his death sentence violated the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution because the trial judge prevented him from telling the jury that he was parole ineligible, a potentially mitigating factor. Rejecting his argument, the Virginia Supreme Court stated that Ramdass had advanced no persuasive reason to modify prior Virginia precedent holding that "a jury should not hear evidence of parole eligibility or ineligibility because it is not a relevant consideration in fixing the appropriate sentence." *Ramdass v. Commonwealth (Ramdass I)*, 246 Va. 413, 437 S.E.2d 566, 573 (1993).

While Ramdass' request for review was pending before the United States Supreme Court, the Court decided *Simmons v. South Carolina*, 512 U.S. 154 (1994), holding that when a prosecutor argues future dangerousness to a capital sentencing jury, a defendant who is parole ineligible has a due process right to respond to that argument by informing the jury, through argument or instruction, of his ineligibility for parole. After deciding *Simmons*, the U.S.

Supreme Court granted Ramdass' petition for certiorari and remanded the case to the Virginia Supreme Court for reconsideration in light of *Simmons*.

On remand, Ramdass argued that because he was ineligible for parole under Virginia's three-strikes statute, *Simmons* applied to his case and required that he be allowed to meet the state's case against him by informing the jury of his parole ineligibility. The Virginia Supreme Court nevertheless reaffirmed Ramdass' death sentence, concluding that the holding in *Simmons* was not applicable to this case. The Virginia court explained that *Simmons* applies only if Ramdass was ineligible for parole when the jury was considering his sentence. The Virginia Supreme Court determined that Ramdass had not been ineligible for parole at that time, since he had only two separate felony offenses within the meaning of the three-strikes provision. *Ramdass v. Commonwealth (Ramdass II)*, 248 Va. 518, 450 S.E.2d 360, 361 (1994).

Although it recognized the Pizza Hut conviction and the Kayani murder conviction as predicate offenses under the three-strikes statute, the court rejected Ramdass' argument that the Jan. 7, 1993, jury verdict of guilty in the Domino's Pizza robbery was also a predicate conviction, because judgment had not yet been entered on that verdict. Accordingly, the court ruled the Domino's Pizza conviction could not be considered as a conviction under the three-strikes statute.

Ramdass asserted in a state habeas corpus petition that *Simmons* required that the jury be accurately informed as to his parole eligibility status. However, Ramdass did not specifically challenge the Virginia Supreme Court's determination in

Ramdass II that under Virginia law, he was not ineligible for parole. Ramdass also claimed that his trial counsel was constitutionally ineffective for failing to investigate and object to the appointment of his mental health expert because that doctor was "notoriously pro-prosecution" and refused to work with the defense.

The Virginia Supreme Court dismissed the state habeas petition, ruling that Ramdass' *Simmons* claim was barred from review by *Hawks v. Cox*, 211 Va. 91, 175 S.E.2d 271 (1970) (an issue previously decided against the petitioner on direct appeal may not again be considered on post-conviction review).

Ramdass then sought habeas relief in the federal courts. He filed a petition in February 1997 alleging, among other things, unconstitutional error in the trial court's failure to allow the jury to consider his alleged parole ineligibility. The U.S. District Court for the Eastern District of Virginia granted Ramdass a writ of habeas corpus based on the *Simmons* claim and ordered the state to resentence Ramdass. *Ramdass v. Angelone*, 28 F.Supp.2d 343 (E.D.Va. 1998). The Commonwealth of Virginia appealed.

On appeal, the Commonwealth of Virginia argued (1) that the *Simmons* claim was defaulted because it was not properly raised in state court, and (2) that Ramdass is not entitled to relief under *Simmons* because, had he been sentenced to life imprisonment, he would not have been parole ineligible under Virginia law. Reversing the district court, the U.S. Court of Appeals for the Fourth Circuit held that the question of whether Ramdass was parole ineligible and thus entitled to inform the jury of

that status was a question of state law. The court concluded that the state court's legal determination that Ramdass was eligible for parole was not reviewable by federal habeas corpus. *Ramdass v. Angelone*, 187 F.3d 396 (4th Cir. 1999). The U.S. Supreme Court thereafter granted Ramdass' petition for a writ of certiorari.

CASE ANALYSIS

The writ of habeas corpus provides a means by which the legal authority under which a person is detained can be challenged. A writ of habeas corpus may be used to re-examine federal constitutional issues even after trial and review by the state courts. *Brown v. Allen*, 344 U.S. 443 (1953). By means of a writ of habeas corpus, a federal court may order the discharge of any person held by a state in violation of the federal Constitution or laws. See 28 U.S.C. § 2241(c)(3).

In *Simmons v. South Carolina*, 512 U.S. 154 (1994), the Supreme Court held that, when a prosecutor argues future dangerousness to a capital sentencing jury, a defendant who is parole ineligible has a due process right to respond to that argument by informing the jury, through argument or instruction, of his ineligibility for parole. In *Simmons*, the prosecutor had argued to the jury during the penalty phase of trial that the death sentence was appropriate because Simmons, who had assaulted and killed several elderly women, was a danger to society. To rebut this argument, Simmons contended that because he was only a threat to elderly women, none of whom he would ever encounter in prison, he did not pose such a danger. Simmons proffered evidence that he was legally ineligible for parole and requested an instruction to the jury that if sentenced to life imprisonment, he would remain imprisoned for the rest of his natur-

al life. The trial court denied Simmons' request to inform the jury of his parole ineligibility.

The Supreme Court ruled that this denied Simmons due process, holding that where the State puts the defendant's future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the capital sentencing jury—by either argument or instruction—that he is parole ineligible.

It is undisputed that the prosecution in Ramdass' case argued that the death penalty was necessary solely because Ramdass was a future danger to society. Whether Ramdass met the second requirement—that the only alternative sentence to death in his case was life imprisonment without the possibility of parole—is the principal source of dispute in this case. In *Ramdass II*, the Virginia Supreme Court determined that Ramdass was *not* ineligible for parole under Virginia law. Although a jury had returned a verdict finding Ramdass guilty of armed robbery in the Domino's Pizza case, the Virginia Supreme Court held that conviction does not occur until judgment is entered. It concluded that the Domino's Pizza robbery could not be counted as the third strike because the court had not entered judgment on that guilty verdict at the time the jury in the present case was deliberating Ramdass' sentence.

Ramdass argues that the Virginia Supreme Court misconstrued *Simmons* as requiring a state law determination of parole ineligibility rather than "the functional and common-sense [im]possibility of parole" as the trigger for the right to inform the jury of parole ineligibility.

(Continued on Page 380)

ty. It is Ramdass' position that questions concerning the nature or duration of restraints on liberty require a functional, rather than a technical, mode of analysis. He says that federal questions require a mode of analysis that looks to the operating consequences of relevant state law rather than to the state's characterization of that law. Ramdass asserts that however the Virginia Supreme Court may characterize the circumstances that result in parole "ineligibility" under state law, he was certain never to have an opportunity to be paroled and therefore was entitled to so inform the jury under *Simmons*.

Moreover, even if state law governs the parole ineligibility determination for purposes of applying *Simmons*, Ramdass accuses the Virginia Supreme Court of attempting to avoid the application of *Simmons* by adopting a novel and highly technical definition of *convicted* in the three-strikes provision. Even if a conviction requires the entry of judgment, Ramdass maintains, the Domino's Pizza guilty verdict still should count as a conviction because the entry of judgment was nondiscretionary, purely ministerial, and legally insignificant.

Ramdass claims that the Supreme Court in *Simmons* looked at the consequences of state law rather than the State's characterization. He says that Ramdass' case is indistinguishable from *Simmons* on both the facts and the law.

The Commonwealth of Virginia, however, argues that *Simmons* grants capital defendants a due process right in state trials to advise a jury of parole ineligibility only when the sole alternative to a sentence of death is a sentence of life imprisonment without the possibility of parole. According to the Commonwealth, that condition can-

not be a general question of practicality determined by a federal habeas court. The Commonwealth asserts that parole eligibility is a state law question.

SIGNIFICANCE

Simmons was decided by a divided Supreme Court. Justice Blackmun wrote for the plurality. Justice Souter filed a concurring opinion in which Justice Stevens joined. Justice Ginsburg filed a concurring opinion. Justice O'Connor wrote an opinion concurring in the judgment in which Chief Justice Rehnquist and Justice Kennedy joined. Justice Scalia filed a dissenting opinion in which Justice Thomas joined.

This case gives the Supreme Court an opportunity to re-examine its decision in *Simmons*. Given changes in the makeup of the Court since *Simmons* was decided (Justice Blackmun has left the Court and Justice Breyer has joined it), it will be interesting to see whether the Court expands or limits the holding in *Simmons*. This case also provides the Supreme Court an opportunity to examine the role of state courts in determining state law when important federal constitutional issues are at stake.

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